

## REMARKS

In the Office Action issued on October 22, 2008, the Examiner:

rejected Claims 1, 3, 10, 11, 13, 14 and 16 under the second paragraph of 35 U.S.C. §112 for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; and

rejected Claims 1, 10, 11, 13, 14 and 16 under 35 U.S.C. §102(b) as being anticipated by Pavcnik (WO 99/62431).

The Applicants have fully considered the Office Action and cited reference and submit this Reply and Amendment in response to the Examiner's action. Applicants respectfully request entry of this after-final amendment under the provisions of 37 C.F.R. §1.116. Reconsideration of the application for patent is also requested.

### Preliminary matter – Summary of telephone interview conducted on November 6, 2008

The Applicants thank the Examiner for the telephone interview conducted on November 6, 2008. During the interview, the undersigned attorney described substantial portions of the amendments made herein and the distinctions between the amended claims and the cited reference to the Examiner. Specifically, the amendment to claim 1 relating to the widths being measured on an axis that is disposed orthogonally to and in the same plane as the lengthwise axis of the strut was discussed in comparison to Pavcnik. Also, the amendment to claim 1 relating to the edge of the graft member extending from the inner and outer surfaces thereof was discussed in comparison to Lenker and Chuter. All of these references are of record.

While no agreement was reached with respect to the claims, the Examiner's comments and insight were helpful and are greatly appreciated.

### Amendments to the claims

The Applicants have herein amended independent claim 1, from which all other rejected claims depend, to require that the edge of the graft member extend "from the inner and outer surfaces thereof." Furthermore, the Applicants have herein amended claim 1 to explain that each of the first, second, and third widths are measured on an axis that is "disposed orthogonally to and in the same plane as" the lengthwise axis of the strut.

These amendments to the claims are fully supported by the application as originally filed; no new matter has been introduced. Exemplary support is found in Figure 11 and in paragraphs [0071] and [0076].

Applicants have also herein amended claim 3 to correct its dependency to reflect claim 1 and not canceled claim 2.

### Rejections under the second paragraph of 35 U.S.C. §112

The Examiner rejected claims 1, 3, 10, 11, 13, 14, and 16 under the second paragraph of 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention. Specifically, the Examiner noted that "the limitation 'each of the first, second, and third widths comprises a width of at least one of the struts measured on an axis' is not understood...." (April 25, 2008, Office action, p. 3).

The Applicants appreciate the Examiner's suggestion for overcoming this rejection and have herein adopted the suggested change. Thus, the Applicants have herein amended independent claim 1 to delete the limitation noted by the Examiner and added the limitation requiring that the "widths being measured on an axis disposed orthogonally to and in the same plane as the lengthwise axis of the at least one of the struts."

The Applicants respectfully submit that these amendments overcome the listed rejection and the concern expressed by the Examiner regarding the "transverse" limitation. Withdrawal of this rejection of the claims is respectfully

requested.

### Rejections under 35 U.S.C. §102

*Pavcnik*

The Examiner rejected Claims 1, 10, 11, 13, 14, and 16 under 35 U.S.C. §102(b) as being anticipated by Pavcnik (WO 99/62431).

The Applicants have herein amended independent claim 1, from which all other rejected claims depend, to require the "widths being measured on an axis disposed orthogonally to and in the same plane as the lengthwise axis of the at least one of the struts."

Pavcnik does not teach or suggest a strut defining a serpentine path with a relatively narrow first strut portion disposed between second and third strut portions *that have widths measured on an axis disposed orthogonally to and in the same plane as the lengthwise axis of the strut that are greater than a similarly measured width of the first strut portion.*

Accordingly, Pavcnik does not anticipate Claim 1 as amended herein because it does not teach each and every limitation of the claim. Furthermore, the reference does not anticipate any of Claims 10, 11, 13, 14, and 16 because each of these claims ultimately depends from Claim 1 and, as a result, includes all limitations of Claim 1.

The Applicants respectfully assert that all claim rejections based on Pavcnik are overcome by the amendments made herein and request their withdrawal.

## **CONCLUSION**

The Applicants have fully responded to the rejections listed by the Examiner in the October 22, 2008, Office Action. The Applicants have submitted this Reply and Amendment under the provisions of 37 C.F.R. §1.116 in order to present the

claims in better condition for appeal, should an appeal be pursued. Entry of the amendment is respectfully requested. Additionally, Applicants respectfully request that the Examiner issue an Advisory Action indicating the status of this Reply and Amendment.

A Notice of Allowability relating to all claims currently under consideration is appropriate and respectfully requested by the Applicants.

Should the Examiner have any questions regarding this Reply and Amendment, or the remarks contained herein, the undersigned attorney would welcome the opportunity to discuss such matters with the Examiner.

Respectfully submitted,

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